

**UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF KENTUCKY  
COVINGTON DIVISION**

**IN RE:**

**LLOYD CHRISTIAN FITCH**

**CASE NO. 12-21191**

**DEBTOR**

**MEMORANDUM OPINION AND ORDER**

This matter comes before the Court on the Chapter 13 Debtor's objection to the claim of his ex-wife, Letitia Marie Fitch (the "Wife"). The Wife filed her Proof of Claim herein (Claim #6-1) for a domestic support obligation ("DSO") in the amount of \$55,280.50 (the "Claim").<sup>1</sup> The Debtor filed an Objection to the Claim ("Objection") [Doc. 20], and a Memorandum in Support of Objection to Proof of Claim #6-1 [Doc. 21] arguing that the debt is not in the nature of alimony, maintenance or support, and should therefore be treated as a general unsecured claim. Wife filed a Response to the Objection [Doc. 25] arguing that the Tennessee State Court has already characterized the debt as a DSO. She further argued that whether the debt is a DSO, and thus non-dischargeable under 11 U.S.C. §523(a)(5), is an issue that should only be determined by adversary proceeding and not in the context of confirmation of a Chapter 13 plan.

The Debtor filed a Reply [Doc. 27] arguing that despite the language used by the State Court that it is clear that the debt is not in the nature of alimony, maintenance or support. The Debtor further argued that as the matter is before the Court on an objection to claim, and not confirmation or a request to determine dischargeability, an adversary proceeding is not necessary, particularly where the Wife has notice of the issue and has chosen to actively participate. The Court agrees with the Debtor that an adversary proceeding is not necessary.

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<sup>1</sup> The Wife later amended her proof of claim (POC #6-2) to add documentary support, i.e. the Divorce Decree.

In a Chapter 13 bankruptcy such as this, the existence of a DSO<sup>2</sup> is significant. First, a DSO is not dischargeable. 11 U.S.C. §1328(a)(2) and §523(a)(5). Second, the Court cannot confirm a Chapter 13 plan if the Debtor has failed to make all post-petition DSO payments. 11 U.S.C. §1325(a)(8). Third, as is relevant here, a DSO is a first priority claim under §507 and the Debtor's plan must provide for payment in full, in deferred cash payments, unless the holder of the claim agrees to different treatment. 11 U.S.C. §1322(a)(2) and §507(a)(1)(A).

These issues of dischargeability and priority of a DSO overlap. Both depend on a determination of the nature of the debt. However, the nature of the relief sought here shall govern the procedure in which this Court shall proceed to determine whether the claim is a DSO. The relief sought is a finding that the Wife's Claim is not a DSO and thus is not eligible for priority status under §507(a)(1)(A). This issue comes before the Court on an objection to claim and not a request to determine dischargeability or as a proposed special provision in a Chapter 13 plan. Thus, §502 is applicable and pursuant to §502, if an objection to claim is made, the court, after notice and a hearing, shall determine the amount of such claim. Fed. R. Bankr. P.

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<sup>2</sup> Section 101(14A) of the Bankruptcy Code defines a DSO as "a debt that accrues before, on, or after the date of the order for relief in a case under this title, including interest that accrues on that debt as provided under applicable nonbankruptcy law notwithstanding any other provision of this title that is –

(A) owed to or recoverable by –

- (i) a spouse, former spouse, or child of the debtor or such child's parent legal guardian, or responsible relative; or
- (ii) a governmental unit;

(B) in the nature of alimony, maintenance, or support (including assistance provided by a governmental unit) of such spouse, former spouse, or child of the debtor or such child's parent, without regard to whether such debt is expressly so designated;

(C) established or subject to establishment before, on, or after the date of the order for relief in a case under this title, by reason of applicable provisions of –

- (i) a separation agreement, divorce decree, or property settlement agreement;
- (ii) an order of a court of record; or
- (iii) a determination made in accordance with applicable nonbankruptcy law by a governmental unit; and

(D) not assigned to a nongovernmental entity, unless that obligation is assigned voluntarily by the spouse, former spouse, child of the debtor, or such child's parent, legal guardian, or responsible relative for the purpose of collecting the debt. 11 U.S.C. §101(14A).

3007 governs objections to claims and, as a contested matter, an objection to claim shall be determined in accordance with the guidelines of Fed. R. Bankr. P. 9014. An adversary proceeding in this context is therefore not necessary.

This Court has previously ruled that an objection to claim of a DSO by a bankruptcy court must be determined by adversary proceeding. In re Micek, Bankr. E.D. Ky., Case No. 09-52014 [Doc. 137]. That case is distinguishable. It involved a unique set of facts arising in dueling bankruptcies filed by both an ex-husband and ex-wife by the same counsel. The wife received her discharge, but an adversary proceeding was filed by the ex-wife's attorneys seeking a determination that her discharge did not bar her attorneys from asserting a statutory attorneys' fee lien in maintenance payments due to her by her ex-husband. Following the filing of this adversary proceeding in connection with the ex-wife's bankruptcy, the Chapter 13 trustee in the ex-husband's bankruptcy objected to the ex-wife's attorneys' claim made in the ex-husband's bankruptcy. The issues raised in the objection to claim were inextricably intertwined with those at issue in the pending adversary proceeding and the unique factual and procedural posture of that matter dictated the result therein. The same is not true here.

Finally, the State Court's prior determination that the debt is a DSO does not resolve this issue. A determination as to whether a debt is in the nature of alimony, maintenance or support shall be made in accordance with federal bankruptcy law, not state law. See *Reissig v. Gruber*, 436 B.R. 39, 43 (Bankr. N.D. Ohio 2010) (citing *Long v. Calhoun (In re Calhoun)*, 715 F.2d 1103, 1107 (6th Cir. 1983)). The label attached to the obligation by state law is relevant but not controlling. *Id.*

As the Debtor has requested a determination that the Wife's Claim is not a DSO and therefore not entitled to priority status, and 11 U.S.C. §502, Fed. R. Bankr. P. 3007, and Fed. R. Bankr. P. 9014 dictate that this Court shall conduct an evidentiary hearing on the Debtor's objection,

IT IS HEREBY ORDERED:

1. An evidentiary hearing will be conducted at **10:00 a.m. on November 29, 2012 in the U.S. Bankruptcy Courtroom, 35 West 5th Street, #306, Covington, Kentucky.**
2. **Joint Stipulations.** The parties shall file Joint Stipulations of Fact in accordance with the court's normal stipulation process.<sup>3</sup>
3. **Witness Lists and Exhibits.** The parties shall file a list of witnesses expected to be called at the hearing, with summary of anticipated testimony. The parties shall also produce for inspection and file copies of all exhibits which they intend to offer into evidence at the hearing. In addition, the parties (either jointly or separately) shall deliver to the court's chambers at 100 E. Vine Street, 3rd Floor, Community Trust Bank Building, Lexington, Kentucky, two (2) indexed exhibit notebooks containing paper copies of all exhibits. If no timely objection to an exhibit is filed, it shall be admitted into evidence at the hearing subject only to a relevancy objection. Unless previously delivered, each party shall have a sufficient number of copies of pre-numbered exhibits at the evidentiary hearing for the court, its law clerk, opposing counsel and the witness.
4. **Time for Filing Joint Stipulations, Witness Lists, Exhibits and Objections.**

All Joint Stipulations, Witness Lists, and Exhibits shall be filed **on or before November 13, 2012 at 4:00 p.m.** The Exhibit Notebooks shall be delivered to chambers on or before the same date/time. Any objections to the Exhibits shall be filed **on or before November 20, 2012 at 4:00 p.m.**

Copies to:

John M. Schultz, Esq.  
T. Martin Jennings, Esq.

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<sup>3</sup> Instructions available at <http://www.kyeb.uscourts.gov> General Info. - Joint Stipulation Preparation

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***The affixing of this Court's electronic seal below is proof this document has been signed by the Judge and electronically entered by the Clerk in the official record of this case.***



**Signed By:**  
**Tracey N. Wise**  
**Bankruptcy Judge**  
**Dated: Monday, October 22, 2012**  
**(tnw)**